

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
WENDELL L. GRIFFEN, JUDGE

DIVISION IV

CA06-874

March 14, 2007

LEWIS FORD SALES, INC. and  
FARMERS INSURANCE GROUP  
APPELLANTS

AN APPEAL FROM  
ARKANSAS WORKERS'  
COMPENSATION COMMISSION  
[F502421; F407137]

V.

JUSTIN FISHER; THREE STATES  
SUPPLY CO., INC., and GALLAGHER  
BASSETT SERVICES, INC.  
APPELLEES

AFFIRMED

On May 19, 2006, the Workers' Compensation Commission found that Justin Fisher suffered a recurrence of a compensable injury on June 10, 2004, resulting in Lewis Ford Sales, Inc. ("Lewis Ford") and its carrier, Farmers Insurance Group, being liable for benefits. Lewis Ford challenges this finding, contending that Fisher actually suffered an aggravation of the injury, thereby putting Three States Supply Co., Inc. ("Three States") and its carrier, Gallagher Bassett Services, Inc., on the risk. We affirm.

Fisher's history of left knee problems began while working for Lewis Ford. While working there in June 2003, Fisher was carrying a part when his knee twisted and he heard a "pop." He testified that it became hard to work and very hard to walk downstairs. During this time, Fisher experienced instability and had trouble negotiating stairs. He presented to Dr. Konstantin Berestnev on June 16, 2003, who assessed him with a left knee sprain. Dr. Berestnev prescribed medication, ice, and knee-stretching exercises. An open MRI was taken on July 7, 2003. Dr. Shane McAlister, who performed the MRI, noted that he

conducted a limited examination due to Fisher's large size. He noted suspicious findings for either a very vertical ACL or a complete ACL tear. Upon reviewing the MRI, Dr. Berestnev assessed a left knee sprain and MRI findings of an abnormal ACL.

On August 18, 2003, Fisher presented to Dr. Tom Coker, who had treated him for a previous right knee injury from a four-wheeler accident. Dr. Coker opined that the MRI was inadequate. He noted that Fisher was negative for Lachman's, which he explained during his deposition testimony meant that his ACL was intact. Dr. Coker diagnosed Fisher with a sprained knee. As a result, Fisher did not return to Dr. Coker for treatment, opining that he would have to simply deal with the pain. He returned to work at full duty after being treated by Dr. Coker.

Lewis Ford terminated Fisher's employment in February 2004. In March 2004, he found employment at Superior Industries working a pack line, but he only stayed a week because he could not handle the standing required by the job. He began working for Three States in May 2004 as a driver.<sup>1</sup> While working there, Fisher had knee trouble, but he thought the problems were part of the healing process.

On June 10, 2004, Fisher experienced more trouble with his left knee. Because of the rainy weather, he had to pull some sheet metal indoors. Fisher explained that as he went to pull a dolly, his knee popped, and he went down. He could not recall how much time he missed because of this injury, but testified that it could have been from two weeks to two months. Medical records show that he presented to company doctor Randall Oates on that day. Dr. Oates stated that he could rule out an ACL tear upon follow-up, but that there was an eighty percent probability that Fisher would recover completely in two to three days.

---

<sup>1</sup>Fisher ceased his employment with Three States and began working for National Home Centers on August 15, 2004.

Fisher presented to Dr. R.B. Wilson, Jr., a week later, where he reported that he was feeling better and needed a return to work slip. Dr. Wilson returned Fisher to work, but limited him to sit-down work until an orthopedist could evaluate him. However, Dr. Wilson noted that Fisher's weight, at the time 338 pounds, compromised his examination.

Fisher presented to Dr. Christopher Arnold on November 4, 2004, who opined that his left knee pain was related to a work injury on June 10, 2004. He noted that it was hard to judge because he was looking at Fisher's medical records retrospectively, but he stated that his findings were consistent with a torn ACL and that he could not rule out other ligamentous or meniscal injury. Fisher submitted to another MRI on December 1, 2004. Dr. Arnold reviewed the MRI on January 18, 2005, and noted an ACL tear. He stated in his notes:

I think this is secondary to his work injury. He had a prior injury two years ago for which he was treated and released. If we want to be completely sure, we can obtain the results of the MRI just to show this was completely normal and the patient will try to do this. In any event, today most of his problems appear to be coming from the ACL tear. . . . The next issue is his contusion situated laterally. I did tell him I could not rule out a stress fracture and that I could not rule out other abnormality. My suspicion is that it all has to do from the resolving contusing from the initial injury when his knee gave way on him.

However, in a note dated February 1, 2005, Dr. Arnold stated:

I had a chance to review the MRI from 7/7/03. Although he states it was reported as clean, there appears to be an ACL tear at that particular time. This makes me suspect the ACL tear is chronic and most likely not related to his work accident of 6/10/04. We will convey this to him and have him follow up at his previous scheduled appointment.

Dr. Coker was deposed on June 22, 2005. During the deposition, Dr. Coker noted that he reviewed the report from the July 2003 MRI. He acknowledged the impression of a suspicion for an ACL tear, but noted that the ACL was intact. Dr. Coker explained that an ACL can be hard to see on some people if they are vertically oriented. He also noted that

Fisher was a large person, which would make the exam more difficult. Finally, he opined that open MRI machines were not as accurate as other machines. Dr. Coker explained that when he saw Fisher on August 18, 2003, he opined that Fisher's ACL was intact and that Fisher did not talk to him as if his ACL were torn. When comparing the reports from the first MRI with the one taken in December 2004, Dr. Coker stated that both describe the fact that they see no ACL; therefore, the reports assume that the ACL is torn.

The ALJ found that Fisher had suffered a compensable injury to his left knee on June 10, 2004, and that while he suffered a previous knee injury while working for Lewis Ford, he continued to work for Lewis Ford until February 2004. She noted that Fisher testified to a specific incident while working for Three States and that he presented objective findings in the form of an MRI indicating an ACL tear. Accordingly, she found that Three States should be liable for Fisher's medical treatment.

The Commission reversed the findings of the ALJ and found that Fisher had suffered a recurrence of his June 2003 injury. After reciting Fisher's medical history and the doctors' opinions in the case, it relied upon Dr. Arnold's medical opinion to support its finding that Fisher's torn ACL had existed since at least July 2003. Because Lewis Ford was on the risk at the time of Fisher's June 2003 injury, the Commission found that it was liable for benefits.

Lewis Ford argues that the Commission's determination that Fisher suffered a recurrence of his 2003 injury, rather than an aggravation of that injury, is not supported by substantial evidence. It notes that after the 2003 injury, Dr. Coker diagnosed Fisher with a sprained left knee rather than a torn ACL. It also notes that Fisher needed no medical treatment until after the June 2004 incident. Lewis Ford acknowledges Dr. Arnold's medical opinion that Fisher may have had a torn ACL in 2003; however, it notes that every other medical expert who viewed the 2003 MRI found it to be inconclusive.

In reviewing decisions from the Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's decision and affirm if that decision is supported by substantial evidence. *Smith v. City of Ft. Smith*, 84 Ark. App. 430, 143 S.W.3d 593 (2004). Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Williams v. Prostaff Temps.*, 336 Ark. 510, 988 S.W.2d 1 (1999). The issue is not whether the reviewing court might have reached a different result from the Commission; if reasonable minds could reach the result found by the Commission, this court must affirm. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). The Commission has the duty of weighing medical evidence, and the resolution of conflicting evidence is a question of fact for the Commission. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2005). We only review the findings of the Commission and not those of the ALJ. *Logan County v. McDonald*, 90 Ark. App. 409, 206 S.W.3d 258 (2005).

The distinction between a recurrence and an aggravation is significant. If the initial disability subsides and the injury flares up without an intervening cause creating a second injury, it is treated as a recurrence. *Atkins Nursing Home v. Gray*, 54 Ark. App. 125, 923 S.W.2d 897 (1996). A recurrence is simply another period of incapacitation resulting from a previous injury, and the original employer remains liable. *Id.* Alternatively, an aggravation is a new injury resulting from an independent cause and must meet its own requirements for a compensable injury. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). The distinction between the two terms is important in this case because it determines which of Fisher's employers must pay him benefits. If he suffered a recurrence of his June 2003 injury, then his employer in June 2003 (Lewis Ford) would be liable. On the other hand, if his June 2004 accident was an aggravation of the June 2003 injury, then

his employer in June 2004 (Three States) would be liable. *See Maverick Transp. v. Buzzard*, 69 Ark. App. 128, 10 S.W.3d 467 (2000).

Here, the Commission's decision that Fisher suffered a recurrence of his June 2003 injury is supported by substantial evidence. While Dr. Coker opined that Fisher suffered a sprained knee and not a torn ACL in June 2003, this opinion is contradicted by Dr. Arnold's opinion that Fisher's July 2003 MRI yielded a finding of a torn ACL. Further, Dr. Arnold's opinion is supported by Dr. Berestnev, who reviewed the July 2003 MRI. He noted that the findings in the MRI were suspicious for either a very vertical ACL or a complete ACL tear, and assessed Fisher with an abnormal left knee ACL. It was within the Commission's power to resolve the conflict in the medical evidence as it did. While Lewis Ford notes the differences between Fisher's 2003 and 2004 injuries, including the amount of work missed as a result and the amount of treatment necessary for the injuries, it merely presents evidence which could support a finding that Fisher suffered an aggravation of his June 2003 injuries. However, reasonable minds could conclude that he suffered a recurrence of that injury, which requires this court to affirm the Commission's decision.

Affirmed.

ROBBINS and HEFFLEY, JJ., agree.